

***A TENANT FRIENDLY GUIDE TO
UNDERSTANDING THE
MARK-TO-MARKET PROGRAM***



**WHAT TENANTS NEED TO KNOW
ABOUT THE MARK-TO-MARKET
(M-2-M) PROGRAM**

THE GREATER NEWARK HUD TENANTS COALITION
944 Broad Street, 3rd Floor, Newark, NJ 07102
(973) 643-7711

The GNHTC is New Jersey's HUD OTAG Grantee

STEPS IN THE MARK-TO-MARKET PROCESS

- I. Owner asks HUD to renew. The owner must give tenants 6 months notice before the contract expiration date of his decision to renew.
- II. HUD refers the property to a PAE to develop a restructuring plan. The PAE must notify tenants of the owner's desire to restructure and of the time and place for a public meeting that must be held between 20-40 days from the notice date.
- III. Federal law also requires the PAE to give tenants copies of documents and inspection reports for their review and comments.
- IV. After completion of the restructuring plan, the PAE must make the plan available to residents at least 20 days before the PAE submits the plan to HUD.
- V. The PAE must provide notice of the location of the plan for inspection and copying and the time, date and place of the second public meeting to obtain additional tenant comments.
- VI. The meeting must be held at least 10 days before the PAE submits the plan to HUD.
- VII. If the owner decides to opt-out, the owner must provide tenants with 12-months notice in advance of the expiration date of the contract.



***Prepared by: ESSEX-NEWARK LEGAL SERVICES
106 Halsey Street, Newark, NJ 07102***

I. What is Mark-to-Market (M-2-M)?

One way the federal government provides housing for low-income people is to pay private landlords subsidies on the condition that they rent housing to low-income people. The subsidies make up the difference between what tenants are charged (the tenants' share of the rent) and the total rent charged for the unit. Over the years, the rents paid by the federal government to owners of subsidized buildings increased until these rents were higher than what the owner could realistically charge if the buildings were not subsidized.

Today, many subsidy contracts are ending. As a result owners are no longer required to rent the buildings to low-income people. The Mark-to-Market (M-2-M) law applies to all multifamily buildings in which the subsidy contracts are about to expire. Congress established the M-2-M program to try to preserve these buildings as affordable housing by renewing their subsidies at a lower cost. Congress wanted to ensure that no owner collects artificially high rents. The M-2-M program lets HUD renew subsidies for up to 30 years and where necessary, restructure or "mark" the subsidized building rents to the "market" rent – or the rents charged in non-subsidized buildings in the area.

II. HOW WILL M-2-M AFFECT MY BUILDING WHEN THE SUBSIDY EXPIRES?

Not all buildings with expiring subsidy contracts will have their subsidies renewed under the M-2-M program. Renewal of the subsidy is a complicated process and will vary from building to building. HUD can refuse to renew a subsidy if the building or the owner does not meet M-2-M guidelines. Since owners cannot be forced to renew the subsidy contract, some owners will choose not to ask for a renewal of the subsidy.

When a building's subsidy contract expires, there are three possibilities depending on the building's rent level:

A. RENEWAL OF THE SUBSIDY -- If the building's rents are equal to rents in the area's housing market, the owner may request renewal of the subsidy. HUD will review the condition of the building and the owner's track record to make sure the project is

IV. WHAT IS A PAE & WHAT IS ITS ROLE?

The Participating Administrative Entity (PAE) is a company or government agency hired by HUD to review buildings for M-2-M eligibility and prepare a renewal/restructuring plan to continue the subsidy. The PAE reviews the landlord's application and inspect the property. The PAE also notifies tenants of the owner's request to renew and schedules the public meetings to solicit document tenant (oral or written) comments. To assist tenant participation, the PAE must provide documents submitted by the landlord and the results of its inspection.

V. WHERE CAN TENANTS GET HELP?

A. Congress created Outreach and Training Grants (OTAG) to help tenants with the M-2-M process. OTAG funds are provided to assist tenants to participate meaningfully in the M-2-M program through organizing and training. The OTAG grant for New Jersey was awarded to the Greater Newark HUD Tenant's Coalition (GNHTC). The GNHTC can help tenants establish and strengthen existing tenant associations, provide training to tenants on how to respond to M-2-M, as well as provide assistance in preparing comments to submit to the PAE.

B. Tenants and tenant associations can also seek assistance and advice from the county Legal Services program. Legal Services provides free legal services to low-income people. Your county Legal Services office can advise you as to your rights under the M-2-M program and may be able to provide other legal assistance to residents participating in the M-2-M process.



For More Information Or To Set Up A Tenants Meeting Contact:
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eligible for renewal. If the owner and building meet HUD guidelines, HUD can renew the subsidy for up to 30 years.

The owner's decision to try to renew the subsidy will depend on conditions in the housing market—will the owner be financially better off renewing the subsidy and receiving rehabilitation help.



B. RENEW SUBSIDY WITH RESTRUCTURING -- If the building's rents are above the "market rent" the owner will almost always ask for renewal. Again, HUD must review the condition of the building and the owner's track record to make sure both are eligible for renewal. If there are problems with the owner, HUD can require the owner to sell the building, as a condition of renewing the subsidy. **This is an excellent opportunity for an organized group of tenants, non-profit or public entity to buy the building.** If the cost of rehabilitating the building is too high, HUD can refuse renewal of the building's subsidy contract.

If the owner and the building meet HUD guidelines, HUD will renew the subsidy under a restructured loan package that pays for the cost of rehabilitation and set or "mark" the rents to the area market rents. The restructuring package may not keep every unit subsidized and may change some subsidies into section 8 vouchers.

SOME BUILDINGS, E.G. ELDERLY, ARE EXEMPT FROM RESTRUCTURING ALTOGETHER, AND THEIR SUBSIDY CONTRACTS WILL BE RENEWED AT THE CURRENT RENTS EVEN IF THE RENTS ARE MORE THAN THE MARKET RENT

C. OWNER OPT-OUTS & MARK-UP-TO-MARKET - Since the subsidy program is voluntary, the owner can choose not to renew the subsidy. This usually happens if the rents at the building are lower than the rents in the area (so the owner thinks he will make more money outside the subsidy program). HUD can offer

to raise the building rents to market and renew the subsidy contract to convince the owner to stay in the subsidy program.

IF HUD DOES NOT RENEW THE SUBSIDY OR THE OWNER OPTS-OUT, HUD WILL GIVE ALL TENANTS IN THE BUILDING SECTION 8 VOUCHERS! TENANTS CAN USE THEIR VOUCHERS EITHER TO REMAIN IN THEIR CURRENT APARTMENT OR TO RELOCATE TO ANOTHER BUILDING. IF THE OWNER OPTS-OUT AND RAISES THE RENTS IN THE BUILDING, RESIDENTS WHO CANNOT AFFORD THE INCREASED RENTS MAY HAVE TO MOVE.

III. WHAT RIGHTS DO RESIDENTS HAVE IN THE M-2-M PROGRAM?

By law, residents have the right to participate in the M-2-M renewal process. The M-2-M process requires notices to residents and an initial public meeting. Residents also have the right to review certain records of the owner and the right to submit oral and written comments during the M-2-M process and on the recommendation to approve renewal or not. Technical assistance is available to help residents participate in this process (See: Point V. below).

Resident participation is not only required by law, it is the only way for residents to ensure that the property is not rejected unfairly by HUD. Residents can be instrumental in the M-2-M process by ensuring that building conditions are properly identified, helping to get additional funding for needed repairs, correcting errors in the property evaluation and organizing themselves to purchase the building (or negotiating with eligible purchasers) if the owner is rejected. Meaningful tenant participation can convince an owner to abandon its plans to opt-out. Also, tenant participation can be the way that a "not-so-good" owner who looks good on paper can be forced out of the restructuring process.

In order to participate meaningfully in the M-2-M process and have the most impact, residents and resident associations need to be organized and educated about the process and their rights. Also, residents must begin the education process as soon as possible, and not wait until they are given notice by the owner that their building's subsidy is about to expire!